

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 7797**

**BILL NUMBER:** SB 509

**NOTE PREPARED:** May 5, 2005

**BILL AMENDED:** Apr 27, 2005

**SUBJECT:** Right to Cure for Deceptive Acts, Contracting and Telephone Privacy, & Home Warranties.

**FIRST AUTHOR:** Sen. Clark

**FIRST SPONSOR:** Rep. Koch

**BILL STATUS:** Enrolled

**FUNDS AFFECTED:** X **GENERAL**  
**DEDICATED**  
**FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** This bill defines an offer to cure a deceptive act as a cure that: (1) is reasonably calculated to remedy the consumer's loss; and (2) includes an additional amount of the greater of 10% of the value of the cure or \$500. The bill also provides that: (1) the court may award additional damages for a willful deceptive act; (2) an offer to cure is only admissible as evidence in a proceeding to show that a party is not entitled to attorney's fees; and (3) a respondent may not be held liable for attorney's fees and court costs unless the actual damages awarded exceed the value of the offer to cure.

This bill specifies that the real estate exclusion for uncured deceptive acts under this section includes a claim involving a construction defect that is brought against a construction professional.

The bill requires a contractor that contracts with a governmental body to certify that the contractor, the contractor's affiliates, and persons acting on behalf of the contractor or its affiliates have not violated the terms of the telephone privacy act in the previous year, and will not violate the terms of the Telephone Privacy Act, Telephone Solicitation Act, or Automatic Dialing Act for the duration of the contract. This bill permits the Attorney General to institute a civil action to void a contract if the contractor: (1) falsely asserts past compliance with the telephone privacy act; or (2) violates the terms of the Telephone Privacy Act, Telephone Solicitation Act, or Automatic Dialing Act while the contract is in effect. The bill also excludes contracts where one party is a political subdivision from compliance with the telephone privacy contracting restrictions.

The bill provides that the warranty date for a new home begins on the date of first occupancy of the new home by the builder, a renter, a person living in the home at the request of the builder, or the initial home buyer. This bill provides that when a home is sold by the builder, a renter, or a person living in the home at the request of

the builder the warranty must include the warranty date and the amount of time remaining under the warranty.

**Effective Date:** Upon passage; July 1, 2005.

**Explanation of State Expenditures:** *Contractor Compliance with the Telephone Privacy Act:* This bill will have an indeterminable administrative cost impact on the Attorney General's Office (AG). The increase in expenditures will depend upon the number of actions initiated under the contractor compliance provisions of the bill. The possible increase in cost could be offset by the provision in the bill allowing the AG to recover reasonable expenses for both investigation and maintaining the action.

**Explanation of State Revenues:** *Damages for an Uncured/Incurable Deceptive Act:* This bill allows the court to increase the amount of damages in an action involving a person relying upon an uncured or incurable deceptive act. It also provides a definition for "offer to cure". Any increase in court fee revenue to the state General Fund will ultimately depend upon the number of civil actions which results from this legislation, but will likely be small.

*Contractor Compliance with the Telephone Privacy Act:* This bill allows the AG to bring an action against a contractor who is attempting to contract with a governmental body if the contractor:

- (1) falsely certifies compliance with the Telephone Privacy Act, Telephone Solicitation Act, or Automatic Dialing Act; or,
- (2) violates the Telephone Privacy Act, Telephone Solicitation Act, or Automatic Dialing Act.

The bill allows the AG to seek damages (in addition to any remedy obtained in this kind of action) equal to the amount of money the contractor obtained through each telephone call made in violation of the bill. These provisions will have an indeterminable impact on the state General Fund. All the money collected by the AG through these actions would be deposited in the General Fund. It is indeterminable how many successful actions will be initiated under the bill, and also what damages will be awarded. This provision does not apply to a contract in which one party is a political subdivision or a body corporate and politic.

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:** *Court Fee Revenue:* Any increase in court fee revenue will ultimately depend upon the amount of civil action which results from this legislation, but will likely be small.

**State Agencies Affected:** Attorney General.

**Local Agencies Affected:** Trial courts, city and town courts.

**Information Sources:**

**Fiscal Analyst:** Adam Brown, 317-232-9854.